THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

-

WRIT PETITION NO.36216 of 1998

-

Date: 16-09-2005

Between:

1. Gompa Appala Swamy, S/o Saidu, aged 47 years, R/o Golla Jaggarajupeta, Gajuwaka Mandal, Visakhapatnam District and others

…Petitioners

a n d

1. The Union of India, represented by the General Manager, South Eastern Railway, Garden Reach, Calcutta-43 and others.

…Respondents

-

-

-

-

-

-

-

-

-

-

-

-

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO.36216 of 1998

ORAL ORDER:

Petitioner filed this petition seeking a direction to the respondents 3 to 5 to pay compensation for their lands in survey Nos.119 and 122/3B of Jaggarajupeta village at Rs.15,000/- and Rs.19,000/- per acre with interest at 12% annual rests and to direct the Union of India and the Chief Engineer, South Eastern Railways, Visakhapatnam (respondents 1 and 2), to provide employment to at least one member in their families for a suitable post in the Railways.

2. The case, in brief, of petitioners, as disclosed from the affidavit filed in support of the petition, is that they are the owners of the lands in survey Nos.119 and 122/3B of Jaggarajapeta village and that respondents 1 and 2 with a view to extend the railway track from Anakapally to Vishakapatnam Steel Plant made marking during June and July 1984 in their and the lands of several others, without issuing any notice, and when they obstructed further work being carried on, respondents 3 and 4 assured payment of compensation under the Land Acquisition Act, 1894 (for short 'the Act'), and also rehabilitation to an younger member in their families and had obtained their signatures and thumb impressions on some forms, and so they, believing the version of respondents 3 and 4, allowed further activity, but when respondents 1 and 2 without paying any compensation to them tried to lay the railway track in their land, they got issued a notice under Section 80 of CPC on 27.04.1987 and filed O.S.No.553 of 1987 on the file of the Court of the III Additional District Munsif, Vishakapatnam seeking a decree of perpetual injunction restraining the respondents from laying railway track or using their lands without paying compensation to them, and obtained an interim injunction in the trial Court, which was confirmed by the appellate Court but the same was vacated by this Court in a revision and thereafter the suit filed by them was dismissed on the ground that Civil Court has no jurisdiction to go into the question of validity or legality of notification issued under Section 4 of the Act, and that respondents 1 and 2, taking advantage of the fact that there is no impedement for their proceeding further, laid the railway track over their lands and deposited a paltry amount into Court for the total extent of Ac.6.83 cents acquired, under Section 30 of the Act, though the value of the land acquired by them ranges from Rs.15,000/- to Rs.18,000/- per acre.

3. On behalf of respondents 1 and 2, the Senior Personnel Officer (Constructions), South Eastern Railway, Visakhapatnam, filed his counter affidavit inter alia contending that at the request of Visakhapatnam Steel Plant, respondents 3 to 5 gave a requisition for acquisition of land at Jaggarajupeta, Koremannapalem, Tunglam, Vadlapudi, etc., Villages for the purpose of laying a railway line, to

facilitate transport of goods manufactured by Visakhapatnam Steel Plant from the stockyard to other places, after depositing the amount of compensation payable to the land owners with respondents 3 to 5, and laid the rail track on the small piece of land made available to the railways. As per the Railway establishment Rules dated 24.11.1987, railways would provide preferential employment to those persons whose lands are acquired on the requisition made by it (the railways) for execution of the work relating to its projects, if such applications are made within two years from the date of acquisition of the land and since petitioners made no such application, they are not entitled to the benefit of those Rules.

4. Respondents 3 and 5 did not file their counter affidavits. Fourth respondent filed his counter affidavit inter alia contending that land in Survey Nos.117, 119 and 122 along with the land in other survey numbers of Golla Jaggarajupeta village was acquired under award Nos.1 and 2 of 1988 dated 25.2.1988, after observing all the formalities as per the Act, and the compensation payable was deposited into the Civil Court, as ownership of the land acquired could not be determined by the Land Acquisition Officer. Since, petitioners have given their consent for acquisition of their lands, they are not entitled to any relief in this Court.

5. The main contention of the learned counsel for the petitioners is that petitioners are entitled to compensation at least @ Rs.15,000/- per acre for lands in Survey No.119 and

@ Rs.19,000/- per acre for lands in Survey No.122/3B besides other statutory benefits and employment opportunity as they agreed for the acquisition of their land only on the assurance given to them that after laying of the railway track they would be provided with employment to one of the members of the families of each of them and since the suit filed by the petitioners was pending for eight and a half years, respondents 1 and 2, taking advantage of the fact that injunction granted earlier in favour of the petitioners was vacated by this Court, had laid railway track and are enjoying the benefits there from, but the compensation payable did not reach the hands of the petitioners and since the averments in the counter affidavit filed on

behalf of respondents

1 and 2 establishes the existence of scheme of rehabilitation and since the land of petitioners is acquired for the purpose of laying a railway track, petitioners are entitled to seek employment to at least one of the members in their families in the Railways irrespective of the fact whether the Visakhapatnam Steel Plant, which made the requisition, is made a party to the petition or not. It is his contention that since fourth respondent, in his counter affidavit admitted that signatures of the petitioners were obtained

in token of their acceptance for acquisition of the land, deposit of the amount in the Civil Court on the ground that ownership of the land acquired is not ascertained, establishes the attitude of respondents in trying to harass and inconvenience the petitioners, because obtaining consent for acquisition is but an acceptance of the ownership of the land acquired.

6. The contention of the learned standing counsel for the railways appearing on behalf of the respondents 1 and 2 is that since the land was not acquired at the instance of the railways and was acquired at the instance of the Visakhapatnam Steel Plant, respondents 1 and 2 are not under an obligation to provide employment to the members of the families of petitioners more so because no applications were made within two years of the acquisition of the land.

7. The contention of the learned Assistant Government pleader for respondents 3 to 5 is that rehabilitation facility is available only if dwelling houses are acquired and since no dwelling houses of the petitioners are acquired they are not entitled to any rehabilitation, and in any event since lands of the petitioners were acquired under the Act and the awards were passed, the remedy, if any, of the petitioners was to proceed under the Act.

8. On my directions, the learned Assistant Government Pleader produced the relevant file and I have gone through the same. The file shows that petitioners were served with notices in the land acquisition proceedings. It also shows that some of

the petitioners i.e. petitioners 3 to 6, 16, 19 and 20 submitted representations to refer the case to Civil Court under Section 18 of the Act for determination of the proper compensation payable to them. But, it is not known if any reference is made or not. The finding in O.S.No.553 of 1987, filed by the petitioners, which became final, is-

> "Therefore the plea of the plaintiffs that without any proper notification and enquiry for acquiring schedule lands the defendants stated laying railway track through their lands is false."

Since two awards were passed on 25-02-1988 all the persons whose lands were acquired, under those awards, have a right to file a petition to refer their case to a Civil Court for determination of compensation, if they are not satisfied with the compensation awarded by the Land Acquisition Officer. The file shows that some persons received the compensation and some persons refused to give statements before the Land Acquisition Officer on the ground that the compensation offered is not adequate. If the petitioners are dissatisfied with the compensation awarded to them, inasmuch as they have notice of the proceedings under the Act and the awards, their remedy for obtaining proper compensation for their lands acquired is to ask for a reference under Section 18 only, but no direction to pay compensation at the rate claimed by the petitioners or at any other rate can be given in this petition by this Court. Since the propriety of depositing the compensation in the Civil Court is not a point for consideration in this petition, the forceful contention of the learned counsel for petitioners relating to the impropriety in depositing the compensation in the Court, is of no help to the petitioners.

9. The other relief sought relates to providing employment to one of the members of the families of the petitioners in the Railways. The learned standing counsel for Railways produced a copy of the letter No.E(NG)II/82/RCI/95 dated 31.12.1982/ 1.1.1983 of the Deputy Director Estt (N) Railway Board, New Delhi addressed to all the General Managers of Indian Railways, containing the guidelines relating to appointment to Group 'C' and D' posts on the Railways of members of families displaced as a result of acquisition of land for establishment of projects. As per the said scheme, the project authorities have to consider the applications received from persons displaced on account of large scale acquisition of land for projects on the railways for employment in Group 'C' or Group 'D' posts in their organization including engagement of casual labour and give them preferential treatment for such

employment, subject to the following conditions.

1. The individual concerned should have been displaced himself or he should be the son/daughter/ward/wife of a person displaced from land on account of acquisition of the land by the Railways for the project.

2. Only one job on such preferential treatment should be effected to one family.

3. This dispensation should be limited to recruitments made from outside in direct recruitment categories and to the first recruitment or within a period of two years after the acquisition of the land, whichever is late.

4. It must also be ensured that the displaced persons did not derive any benefit through the State Government in the form of alternative cultivable land etc.

5. The person concerned should fulfill the qualifications for the post in question and also be found suitable by the appropriate recruitment Committees. In the case of Group 'C' posts for which recruitment is made through the Railway Service Commission, the Chairman or the Member of the Railway Service Commission should be associated in the recruitment.

Therefore, it is clear that an application for such preferential appointment should be made within two years from the date of acquisition. If the petitioners did not make such an application they cannot be granted any relief in this petition.

10. Since Section 4(1) notification issued for acquisition of the land reads-

> "whereas it appears to the Government of Andhra Pradesh that the lands specified in he schedule below and situated in Block No.13 of Jaggarajupeta village, Gajuvaka Mandal, Visakhapatnam District are needed for a public purpose, for Railway facilities to Visakhapatnam Steel Project on the north of NH 5 notice to that effect is hereby given to all, to whom it may concern in accordance with the provisions of Section 4(1) of the Land Acquisition Act I of 1894……."

prima facie it cannot be said that the land was acquired for the benefit of the railways. May be by serving Visakhapatnam Steel Plant, the railways also may get benefited, though the cost of acquisition was met by the Visakhapatnam Steel Plant. Be that as it may, the fact remains that advance possession was taken on 12-7-1984. In reply to the notice to appear before him on 20-11-1987 to record his statement in writing, second petitioner made a representation to the Land Acquisition Officer, inter alia, alleging that even in 1984 railway started work on his land for laying railway track without giving any notice and so he issued a notice and they stopped work, and when they started work again in April 1987, O.S.No.553 of 1987 was filed after issuing a statutory notice. At page 8 of the Award No.1/88 dated 25-02-1988, the Land Acquisition Officer observed-

> "On 12-01-1988, the Special Officer, Steel Plant, LA, Visakhapatnam with the Special Deputy Collector, LA, Steel Plant, Unit-II, Visakhapatnam and the Special Deputy Tahsildar-IV, has inspected the lands etc. The Special Officer has enquired the Villagers whether they are willing for enhanced rates of compensation @ Rs.17,000-00 per acre if dry land as enhanced by the Government of India and if so, they should give affidavits before 13-01-1988 failing which they will be paid compensation at the pegged down rate of Rs.1,270-00 per acre of dry land. As the land holders did not turn up so far, I am compelled to pass the Award at the pegged down rate.
>
> Advance possession of the lands was taken on 12-07-1984. As such interest @ 9% per annum has to be paid for the first year and @ Rs.15% per annum for the subsequent period i.e., upto 25-02-88 ....."

and at page 4 of the Award No.2/88 dated 25-2-1988, the Land Acquisition Officer observed-

> "On 12.1.88 the Special Officer, myself Spl.Dy. Tahsildar-IV have inspected the lands etc. The Spl. Officer has enquired the villagers whether they are willing for enhanced rates of compensation @ Rs.17,000/- per acre of dry land as announced by Government of India and if so, they should give affidavits before 18.1.88, failing which they will be paid compensation at the pegged down rates of Rs.1270/- per acre of dry land. As the land loosers did not turn up so far, I am compelled to pass the award at the pegged down rate.
>
> Advance possession of the lands was taken over on 12.7.84 and interest @ 9% PA has to be paid for the first year and @ 15% PA for the remaining period i.e. upto 25.2.1988....."

Since the awards were passed in 1988, though advance possession was taken in 1984, even assuming that limitation starts from the date of passing of award, petitioners, if they wanted to avail the benefit of the circular of the railways

(assuming that the acquisition is for the benefit of the railways), should have made application to the railways before the end of 1990. They did not do so, but they chose to file this petition in 1997 i.e. more than 13 years after possession was taken over from them. Therefore, they cannot claim the benefit of the G.O.

11. With regard to the claim for employment in Visakhapatnam Steel Plant, since the petitioners did not choose to make the Visakhapatnam Steel Plant a party to the petition, and since the respondents 3 to 5 are only Land Acquisition Officers and since the State of Andhra Pradesh acting as the agent of the Union of India for acquisition of the land for the benefit of Visakhapatnam Steel Plant, petitioners are not entitled to any relief in this petition.

12. Hence the petition is dismissed. No costs.

(C.Y.Somayajulu, J.)

Date: 16-09-2005

Mdaa/cvrk